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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 32

Application Number: 08/827,634
Filing Date: April 09, 1997
Appellant(s): BOYE ET AL.

Jerry L. Mahurin
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 27, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

Art Unit: 2176

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that the appealed claims do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

Art Unit: 2176

(9) Prior Art of Record

5,845,303	TEMPLEMAN	12-1998
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5,897,644	Nielsen	4-1999
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Lemay, L. "Teach Yourself Web Publishing with HTML in a Week", SAMS Publishing (1995), pp. 306, 346, 348

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5, 8-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to independent claims 1, 10, 11, 12, the phrase regarding a layout as “*susceptible to influence*” by browser configuration, in each of said claim is vague and indefinite. It is unclear if said claimed layout is actually being influenced.

In regard to dependent claims 2-5, 8-9, 13-19, claims 2-5, 8-9, 13-19 are rejected for fully incorporating the deficiencies of their respective base claims, as explained above.

Examiner's Note

The following claims are rejected based upon a possible interpretation of the phrase "*susceptible to influence*", as a layout influenced by browser configuration.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 10-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Templeman, U.S. Patent No. 5,845,303 issued December 1998, in view of Nielsen, U.S. Patent No. 5,897,644 issued April 1999 (previously cited reference).

In regard to independent claim 1, Templeman teaches a display system utilizing the merging of content into a set of display frames, said frames organized into metaforms for presenting said content in various preferred formats, intended to preserve the original content presentation style (i.e. newsletters, reports, business letters, etc.). The system uses information about the input data to determine a (preferred) display format for said data (Templeman Abstract, column 3 lines 15-43; compare with claim 1 "*A method for preserving a preferred presentation....comprising*").

Templeman teaches obtaining obtaining a layout of display elements (Templeman column 3 lines 15-25). The use of elements on a web page would have been obvious to one of ordinary skill in the art at the time of the invention, because Templeman teaches that the hierarchical tagging of its system permits importation of HTML formatted data, suggesting an HTML embodiment, and providing the advantage of a popular type of

Art Unit: 2176

document presentation utilized on computers such as PDA's, as well as the Internet (Templeman column 1 lines 34-36, column 3 lines 40-43, column 7 lines 62-67) (compare with claim 1 "*obtaining a layout of display elements on a web page*").

Templeman teaches analyzing input content data for merging onto an appropriate (preferred) frameset (Templeman column 3 lines 15-25, 28-40). Templeman teaches an originally authored tag within the received content for identifying to the system the appropriate (preferred) form to use, in the present case, a newsletter style frameset (Templeman column 5 lines 30-56, column 8 lines 60-65, Figure 3A). It is noted that said newsletter frameset (Figure 3A) incorporates two main body columns, separated by a main vertical split which is determined by the template. This can be interpreted as a primary split direction, said split direction typical of many newsletters and newspapers. (compare with claim 1 "*determining, using a first computer system....on said one or more second computer systems*", and "*determining splits of the web page, in the primary split direction*").

Templeman does not specifically teach said layout presentation influenced by browser configuration. However, Nielsen teaches a transformation that transforms a web page (preserving an aspect ratio), for display in an HTML processing application (i.e. a web browser) in output devices of differing sizes (Nielsen Abstract, column 3 lines 31-50, column 7 lines 19-65; compare with claim 1 "*said layout is susceptible to influence by browser configuration*"). It would have been obvious to one of ordinary skill in the art at the time of the invention to apply Nielsen to Templeman, providing Templeman the benefit of web page display resizing within Templeman's relationship constraints (Templeman column 8 lines 41-48) in web browsers for fitting various sized devices (i.e. laptops, PDAs, etc.).

In regard to dependent claim 2, Templeman teaches a metaform which can be selected by a user (Templeman column 5 lines 45-49).

In regard to dependent claim 3, Templeman does not specifically teach locking the size of text. However, Nielsen teaches transforming a web page utilizing an aspect ratio, including a "Transform Font Size" procedure for transforming a font size (Nielsen column 9 lines 13-27). From the point of view of the original web page, Nielsen "locks" the various fonts within the constraints of a determined transformation, so as to preserve the various ratio of font sizes as originally intended, when the altered web page is shown. It would have been obvious to one of ordinary skill in the art at the time of the invention to apply Nielsen to Templeman, providing Templeman the benefit of locking font sizes of a page within determined transformation formulas, in order to preserve certain visual content characteristics within pages on displays of differing sizes.

In regard to dependent claim 4, Templeman teaches a newsletter template frameset (Templeman Figure 3A), used for displaying the newsletter of Templeman Figure 1A (see also Templeman column 5 lines 30-36), said newsletter displaying locations of determined splits, as defined by said frameset.

In regard to dependent claim 5, Templeman teaches a template newsletter frameset primarily showing two columns in accordance with a single vertical center split, as dictated by said template (Templeman Figures 1A, 3A).

In regard to dependent claim 8, a publish request from a user would have been obvious to one of ordinary skill in the art at the time of the invention, because entering a URL and pressing <ENTER> in a typical web browser is interpreted as a signal to a server to fetch (publish) a web page onto the screen of said browser. In addition, various buttons typically shown on a browser (i.e. Home/Reload buttons, as well as bookmark lists) substantially serve the same function. Providing a publish request provides Templeman the benefit of performing transformations at a convenient time for a user.

In regard to independent claim 10, claim 10 reflects the system comprising computer readable instructions used for performing the methods as claimed in claim 1, and is rejected along the same rationale.

In regard to independent claim 11, claim 11 reflects the computer readable storage medium comprising computer readable instructions used for performing the methods as claimed in claim 1, and is rejected along the same rationale.

In regard to independent claim 12, claim 12 reflects the system comprising computer readable instructions used for performing the methods as claimed in claim 1, and is rejected along the same rationale.

In regard to dependent claims 13, 14, Templeman teaches a metaform (template) can be selected by a user. Since Templeman teaches metaforms existing for various types of presentations (i.e. newsletters, reports, business letters, etc.) with differing display properties, selection of various metaforms includes selection of various split directions within said metaforms (Templeman column 3 lines 29-40, column 5 lines 45-49; compare with claim 13).

Templeman teaches a default vertical split direction within a newsletter template frameset (Templeman Figure 3A; compare with claim 14)

In regard to dependent claim 15, Templeman teaches a vertical split direction within a newsletter template frameset (Templeman Figure 3A).

In regard to dependent claims 16, 17, Templeman teaches a newsletter template frameset comprising various vertical and horizontal splits (Templeman Figure 3A). Templeman lays content into the various dynamically sized frames of said frameset divided by various splits (Templeman column 3 lines 15-26, column 8 lines 14-38, 42-48, column 9 lines 4-14).

In regard to dependent claims 18, 19, Templeman and Nielsen teaches a newsletter page displayed with splits analogous to the newsletter template frameset (Templeman Figures 1A, 3A; compare with claim 18).

Templeman teaches a newsletter frameset, the sizes and constraints of frames within said frameset are dynamically and independently calculated (Templeman column 3 lines 20-26, column 8 lines 40-49, 60-65, column 9 lines 25-34; compare with claim 19).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Templeman, U.S. Patent No. 5,845,303 issued December 1998, in view of Nielsen, U.S. Patent No. 5,897,644 issued April 1999, and further in view of Lemay, Laura (hereinafter Lemay), Teach Yourself Web Publishing with HTML in a Week, Sams Publishing, 1995, pp. 306, 346, 348 (previously cited reference).

In regard to dependent claim 9, Templeman does not specifically teach a preview request. However, Lemay teaches an HTML writer utilizing a Test (preview) button (Lemay p. 348). It would have been obvious to one of ordinary skill in the art at the time of the invention to apply Lemay to Templeman, providing Templeman the benefit of previewing a page after importation of HTML data, to see if said importation was successfully integrated (see also Templeman column 7 lines 62-67).

(11) Response to Argument

Beginning on page 7 of the brief, Appellant argues the following issues, which are accordingly addressed below.

- a. *“Appellant submits that the use of the phrase “susceptible to influence” does not make claim 1 indefinite.”* (page 8 – argument B, of the brief).

The examiner respectfully disagrees. The examiner respectfully maintains his position that the phrase “*susceptible to influence*” is vague and indefinite. This phrase does not serve to define the scope of the claimed limitations, because it is unclear if any action is to be taken. Something which is “*susceptible to influence*” is not a definitive phrase, and does not serve to define the claims so that the metes and bounds of claimed coverage is clear. The examiner wonders how Appellant intends to litigate the claims if this phrase is included. Appellant argues that one can be his/her own lexicographer (Appellant also refers to a dictionary definition – Exhibit 1), and additionally argues that the Final Office Action’s response only reinforces Appellant’s position. It is respectfully noted that the examiner rejects the claims under 35 U.S.C. 103(a) based upon a possible interpretation of the phrase “*susceptible to influence*”, as a layout influenced by browser configuration.

- b. *“Independent claim 1 defines ‘determining, using a first computing system, a primary split direction for the web page’ and ‘determining splits of the web page, in the primary split direction’. Templeman as modified by Nielsen does not disclose at least these limitations.”* (page 9 of the brief).

The examiner respectfully disagrees. Templeman teaches merging of content into a set of display frames, said frames organized into metaforms for presenting said content in various preferred formats, intended to preserve the original content presentation style (i.e. newsletters, reports, business letters, etc.). Templeman analyzes the data stream and matches a (preferred) display format for said data.

c. *“Therefore, Templeman requires that column or row relationships be defined as constraints. In other words, the metaforms of Templeman defines or sets column spacing while the present invention determines both a primary direction of splits on a web page and the splits themselves, in that direction. Furthermore, Templeman is silent as to splits in general and as to determining a primary direction of splits on a web page. Any splits and their directions present in Templeman are predefined in the metaform.”* (page 9, at bottom, of the brief).

The examiner respectfully disagrees. Claim 1 recites in pertinent part determining a primary split direction for the web page. Templeman teaches a newsletter layout template (Templeman Figure 3A), which shows various splits (other template layouts can be used – Templeman column 5 lines 40-45). Support for “split directions” can be found in Appellant’s specification page 14 lines 15-18, and page 21 lines 2-12, also Figure 14a. It is respectfully noted that Templeman Figure 3A teaches various horizontal and vertical direction “splits” between columns and images within said template, said figure is usable within the context of at least Figure 14a of Appellant’s specification. The claims do not preclude the examiner from using metaform predefinitions. In addition, Templeman has the capability of adapting data layout to different templates if an intended template is unavailable (Templeman column 11 lines 50-67). In addition, Templeman’s split number and direction has been determined (or pre-determined) by at least the designer of said template on a “*first computing system*” using Templeman’s invention.

d. *“Independent claim 1 also defines a ‘layout is susceptible to influence by browser configuration’. Despite the contention of the Final Office Action, Nielsen does not disclose this limitation.”* (page 10 of the brief, also discussed on page 12 of the brief).

The examiner respectfully disagrees. Nielsen teaches a transformation that transforms a web page (preserving an aspect ratio), for display in an HTML processing application (i.e. a web browser) in output devices of differing sizes. Different size browsers have a bearing on display presentation. The examiner applies Nielsen’s resizing to Templeman’s web page display resizing and relationship constraints. It is respectfully submitted that Nielsen’s display and font size are definite aspects of web page layout that change with browser size, as taught by Nielsen.

e. *“Thus again, the examiner has relied on personal knowledge by stating ‘the newspaper designer can interpret these columns (and/or their vertical white space columns) as ‘primary splits’.’ Therefore, Appellant respectfully contends that the Final Office Action fails to meet the duty imposed by 37 C.F.R. 1.104(d)2 and/or M.P.E.P. 2144.03 through the Examiner’s failure to provide an Affidavit or reference. Thus the continued rejection of claim 1 is improper.”* (page 11, at top, of the brief).

The examiner respectfully disagrees. Templeman teaches a newsletter frameset (Figure 3A) incorporating two columns, separated by a blank vertical area. Newspapers and newsletters with multiple columns of text have been in common use since at least the last century (see the Washington Post). The skilled artisan is cognizant of the observation that higher numbers of columns used in a newspaper generally equates to a greater amount of knowledge presented, therefore it is generally advantageous for a newspaper designer to use as many columns of text as practically and aesthetically possible within its layout. Since newspaper columns are

Art Unit: 2176

generally vertical, said columns typically separated by vertical areas of white space (“splits” for visually defining/separating each column), the newspaper designer can interpret these columns (and/or their vertical white space columns) as “primary splits” (in this case, primarily vertical splits between columns). It is respectfully submitted that claims can be rejected based upon general knowledge that the skilled artisan possesses at the time of the invention, in combination with various references, accordingly.

f. *“The statement ‘providing Templeman the benefit of web page display resizing within Templeman’s relationship constraints... in web browsers for fitting various sized devices’, is merely a restatement of the proposed combination not a reason or motivation for making the combination.”* (page 12, near top, of the brief).

The examiner respectfully disagrees. Templeman teaches relationship constraints which can override template parameters, so as to preserve the general layout type, even when different size elements are added and subtracted. Nielsen teaches resizing web pages to fit various display devices. The examiner applies Nielsen to Templeman’s layout restructuring, allowing Templeman the desired benefit of overriding template parameters in order to adapt to the limitations of smaller (i.e. PDA) displays. It is respectfully submitted that hindsight reconstruction is not used in the rejection of instant claims.

g. *“Furthermore, Appellant respectfully contends, contrary to the Final Office Action, that the ‘Transform Font Size’ of Nielsen does not teach ‘enabling the size of selected text of the web page to be locked’* (page 13 – argument D, of the brief).

The examiner respectfully disagrees. Nielsen teaches transforming a web page utilizing an aspect ratio, including a “Transform Font Size” procedure for transforming a font size. As described in the rejection of claim 3, from the point of view of the original web page, Nielsen “locks” the various fonts within the constraints of a determined transformation, so as to preserve the various ratio of font sizes as originally intended, when the altered web page is shown. The examiner applies Nielsen’s teaching to Templeman, providing the desired benefit of preserving certain visual content characteristics within pages on displays of differing sizes.

h. *“As the Final Office Action points out Templeman only ‘teaches a newsletter frameset primarily showing two columns’ not rows or columns in accordance with splits.”* (page 14 – argument F, of the brief).

The examiner respectfully disagrees. Appellant’s inclusion of Boolean OR within claim 5 allows the examiner to choose either columns, or rows. In addition, Templeman’s Figure 3A (the space between item 86 and item 90) can be interpreted as showing a split in the horizontal direction. The resulting web page is designed to be displayed (i.e. displayed internally) within a browser.

i. *“It seems the Final Office Action fails to address this request”* (page 14, at bottom, to page 15 – argument G, regarding Official Notice, of the brief).

The examiner respectfully disagrees. Regarding claim 8, the skilled artisan is cognizant that “publishing” a web page generally involves making said page available to users (i.e. web pages accessible via the Internet). A “publish request from a user” would have been obvious to one of ordinary skill in the art at the time of the invention, because entering a URL and pressing <ENTER> in a typical web browser (i.e. Netscape) is interpreted as a signal to a server to fetch (publish) a web page onto the screen of said browser. In addition,

Art Unit: 2176

various buttons typically shown on a browser (i.e. Home/Reload buttons, as well as bookmark lists) substantially serve the same function as fetching and displaying published web pages.

j. Appellant argues on page 16, to middle of page 17 of the brief, that Lemay teaches away from the invention, and that improper motivation is used.


The examiner respectfully disagrees. The examiner uses Lemay to specifically teach an HTML writer utilizing a Test (preview) button (Lemay p. 348). It would have been obvious to one of ordinary skill in the art at the time of the invention to apply Lemay to Templeman, providing Templeman the benefit of previewing a page after importation of HTML data, to see if said importation was successfully integrated (see also Templeman column 7 lines 62-67). The examiner applies the test preview button to Templeman, providing Templeman the desired benefit of testing its layout presentation.

k. Appellant's arguments from page 17 (argument I) to page 23 are substantially similar to those previously presented. Accordingly, the examiner's above responses apply to these arguments as well.

Art Unit: 2176

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


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January 21, 2004

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